COMMUNICATIONS ALLIANCE LTD

Communications Alliance Submission

to the Department of the Treasury and the Data Standards Body

Consumer Data Right in the telecommunications sector

CDR rules and standards design paper

5 April 2022

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Communications Alliance

Communications Alliance is the primary communications industry body in Australia. Its membership is drawn from a wide cross-section of the communications industry, including carriers, carriage and internet service providers, content providers, platform providers, equipment vendors, IT companies, consultants and business groups.

Its vision is to be the most influential association in Australian communications, co-operatively initiating programs that promote sustainable industry development, innovation and growth, while generating positive outcomes for customers and society.

The prime mission of Communications Alliance is to create a co-operative stakeholder environment that allows the industry to take the lead on initiatives which grow the Australian communications industry, enhance the connectivity of all Australians and foster the highest standards of business behaviour.

For more details about Communications Alliance, see http://www.commsalliance.com.au.

1. Introduction

Communications Alliance welcomes the opportunity to make a submission to the Department of the Treasury (Department) and the Data Standards Body (DSB) in response to the CDR rules and design paper: *Consumer Data Right in the telecommunications sector*.

This submission only represents the views of Communications Alliance's carrier and carriage service provider (C/CSP) members.

2. Process and assessment of regulation impact

2.1. The telecommunications industry values the ongoing consultative processes undertaken by the Department of the Treasury in relation to the designation of the sector and the detail of the Consumer Data Right (CDR) framework as it will relate to our industry.

2.2. During the consultation, telecommunications representatives have consistently pointed to the heavy additional costs – including in relation to systems, business processes, staffing and regulatory management – that will be borne by the sector under a CDR framework, and the fact that the Government's assessment was unable to quantify any hoped-for benefits to consumers arising from designation.

2.3. Given these circumstances, the detail of the CDR rules takes on considerable importance. Communications Alliance and its members advocate a least-cost approach to the implementation of CDR in telecommunications, as is outlined in more detail in this submission.

2.4. Following release of the final CDR rules and design standards, industry will require an appropriate implementation period to enable sufficient time to implement and test significant systems and business changes. Please refer to the section of this submission titled "Staged Implementation" for further feedback in this regard.

2.5. We note, also, the review of the effectiveness of CDR being undertaken by Elizabeth Kelly PSM and believe it is essential that there be multi-sectoral input from industry.

3. Scope of data sharing

3.1. Following are some general principles that the Communications Alliance members in the telecommunications sector believe should sensibly be applied to the scope of the framework within our sector:

1) **Maintain a minimum-viable product** (MVP) approach as taken by the Australian Competition and Consumer Commission (ACCC) when developing the banking CDR Rules being the simplest and narrowest rules necessary to enable access to data for high-priority products. This helps ensure the CDR is built in a way which minimises costs to industry – and, ultimately, to consumers. This should be applied for things such as covered products – for example, in energy only electricity and not gas is covered in version 1. A similar approach should be taken with specific products in telecommunications.

2) **Reciprocity principle should be applied in two ways:**

   1. to CSP under whatever threshold they set who seek to become an accredited data recipient, and
   2. to Over-the-Top (OTT) providers who offer messaging/voice services who seek to receive telecommunications data. This is consistent with the CDR Bill explanatory memorandum regarding the principles and scenarios of reciprocity.

3) **Extending coverage** to include OTT provider data on SMS, MMS and calls, or otherwise excluding the data for all providers to ensure regulatory neutrality in the market (and noting that an aggregated view of total calls/SMS sent in a month from telco will not offer a full picture of a customer's communications usage where they may use OTT services).

4) **Limiting requests** to current data, with some limited historical data included (such as payments made) within a 12-month period, given the high costs telecommunications providers face in accessing historical data and the currently low demand for telecommunications data in the CDR framework.

Which data holders should be required to share data?

Questions

1. ***Do you support establishing a threshold for mandatory participation in CDR for the telecommunications sector (i.e. recommending a de minimis threshold)? How should such a threshold be established (for example, should it be based on the number of customers a carrier or CSP has)?***

2. ***Should a de minimis threshold be recommended for consumer data sharing obligations only, or to both consumer and product data sharing obligations?***

3. ***Are there any existing regulatory thresholds that can be adopted for the purpose of establishing a clear de minimis threshold in the CDR?***

3.2. It is fair to say that there is a range of views across industry operators on this issue – including among members of Communications Alliance. Therefore, we do not purport to present in this submission a consensus view on the range of possibilities that exist.

3.3. We recognise the difficulties that compliance with the regime may create for small providers and, indeed, have pointed in earlier submissions that the additional regulatory imposts, combined with the existing burdens, could be sufficient to effectively force some small players out of the industry.

3.4. Equally, we would not want to create a framework that could have anti-competitive effects. It would be difficult not to question the usefulness of the CDR if operators comprising a large component of overall market share were not participating.

3.5. If a de minimis approach was to be adopted, the options could include the Treasury recommendation of 30,000 SIO's, or a group approximating the 55 or so entities that the Federal Court uses for orders in relation to the blocking of websites that promote online copyright infringement. Alternatively, a much lower SIO number (maybe around 2,000 so that only genuinely tiny players (and a very small collective market share) are not compelled to participate.

3.6. In a de minimis scenario, if one is adopted, we agree with Treasury's view that any service provider below the threshold that wants to participate in CDR is entitled to, but not obliged to.

What products and what product-related datasets are in scope

Questions

4. How can we best describe the core classes or types of phone, internet and broadband products across carriers and CSPs to support meaningful product comparison and other use cases, and to ensure products are adequately described for the purposes of consumer engagement and consent?

5. Do you support excluding products offered to enterprise customers from product reference data sharing? Should this exclusion be limited to products that are not publicly available and are highly negotiated?

3.7. Yes. Products offered to enterprise customers should be excluded from product reference data sharing obligations. The exclusion should apply to all enterprise products, whether individually negotiated with the customer, or not.

3.8. This exclusion is required to protect confidential commercial information in relation to dealings with individual enterprise customers. It is also critical to mitigating the implementation and regulatory compliance burden on industry.

3.9. Enterprise customers typically do not purchase products where there is a standard set of product information available that is equivalent to the information provided in Critical Information Summaries or Key Fact Sheets.

3.10. Customers switching between providers, based on products plans, is highly unlikely to be a valuable use case in the enterprise market.

3.11. Product reference data sharing would not easily apply to enterprise products. These are not the type of products where there is a standard set of product information available that is equivalent to the information provided in Critical Information Summaries or Key Fact Sheets. Generally, enterprise customers have individual contracts with bespoke pricing or other terms based on a range of factors.

6. Are there any sectoral considerations in relation to limiting product data sharing to publicly offered products that we should be aware of?

3.12. Communications Alliance supports Treasury's view that only information about publicly available products, already held in digital form, should be in scope for product data sharing. This is important to ensure the protection of confidential information and is also important to mitigating the implementation and regulatory compliance burden on industry

7. Are there other products that would not be appropriate for inclusion?

3.13. Given the difficulty in comparing products with devices or hardware (other than modems) included, it may be appropriate to exclude these products.

3.14. Also, voice/broadband legacy services should be excluded from being products in scope. That is legacy service defined by reference to section 13(3) of the *Telecommunications Regulations 2021 (F2021L00289)* :

13(3) A legacy service is any of the following services:

(a) PSTN (public switched telephone network);

(b) ADSL (asymmetric digital subscriber line);

(c) ADSL2;

(d) ADSL2+;

(e) SHDSL (single pair high-speed digital subscriber line);

(f) ISDN (integrated services digital network);

(g) another service (other than VDSL) covered by the Communications Alliance Industry Code C559:2012 "Unconditioned Local Loop Service (ULLS) Network Deployment", as registered by the ACMA on 16 May 2012 under section 117 of the Act.

What is required data sharing?

Questions

8. Are there any considerations specific to the telecommunications sector that we should be aware of in relation to customer datasets as outlined in this paper?

3.15. Communications Alliance agrees with Treasury's view that consumer data should be limited to data held in digital form.

9. Should information about whether a customer's account is associated with a hardship program be excluded?

3.16. Yes, we agree that this information should be excluded, in addition to any specific products or services that are provided to support customers in hardship circumstances.

10. Are there any other sector specific considerations relating to account information we should be aware of?

3.17. Different service types have different identification information obligations during the service activation and connection process (i.e. prepaid services have defined requirements under the *Telecommunications (Service Provider — Identity Checks for Prepaid Mobile Carriage Services) Determination 2017*, with no equivalent requirements for fixed line services, except under the *Privacy (Credit Reporting Code 2014*). These variations result in different account information being held, with accounts structured based on business needs, rather than a consistent approach across the sector. The diverse sets of information held about account holders, secondary users, and end-users (including unknown 'ghost users') in turn impacts account authorisation across providers and service types.

11. What types of metadata are typically made available to consumers on their bill?

3.18. Generally, this will depend on the product type, noting that prepaid services do not require the provision of a bill under the TCP Code. There are also new 'subscription' style prepaid M2M plans (which look and feel like post-paid services but are actually prepaid) and, consequently, may not have a bill.

3.19. For unlimited broadband products, there is often limited, if any, 'metadata' made available to consumers on their bill. The information on the bill is information about the subscriber and the account, rather than the use of their broadband service.

12. To what extent can insights be drawn from the inclusion of metadata within the scope of required data sharing?

3.20. The insights may be limited concerning mobile products given many consumers also use over-the-top services to make calls and send messages. We reiterate that with respect to messaging, we observe that over-the-top (OTT) messaging services have a greater share in the overall messaging market than SMS/MMS.

13. What are the different types of usage data displayed on bills or otherwise made available through online accounts (for example, total number of calls or SMSs, or total amount of data used over a certain period)?

3.21. Given the proliferation of unlimited plans for voice and SMS, it is not clear what benefit, if any, there is to justify the cost of including usage data for voice and SMS within the scope of the required data sharing. Further, customers are also using over-the-top services to make calls and send messages, so the usage data does not provide a complete picture of how a device may be used.

3.22. Providers often do not make usage data available for unlimited services, even via self-service functions. Internal provider data suggests that the absence of this data does not cause any concerns to customers, i.e. no driver for customer feedback/complaints or customer requests.

14. How may usage data differ across products (for example, unlimited compared to limited products)?

3.23. Usage data is not uniformly provided on the bill for unlimited NBN broadband products with systems and processes varying across services and service providers. Given most fixed NBN broadband products have unlimited data allowances and given the complexity involved to provide this information (with very limited benefit), usage data should not be required for this category of products.

15. To what extent can insights be drawn about a consumer based on their usage data? Is usage data of interest to ADRs to support use cases (even with respect to plans with unlimited usage)?

3.24. There will be limitations on the insights in relation to pre-paid services, but the barriers to customers changing providers are very low for these services, meaning that CDR data are less valuable in these cases.

3.25. Whether usage data for unlimited services is of interest to ADRs needs to be tested against the potential costs of providing such data. As indicated above, we do not see merit in the provision of the data and foresee substantial complexities in the provision of the data.

16. Do you support the time frame of requiring carriers and CSPs to disclose consumer data for up to the past 2 years, subject to the earliest holding day of 1 January 2022?

3.26. We agree with Treasury's view that consumer data, overall, should be limited to data held in digital form, including account, payment history data and metadata. However, historical data rules should only be developed where linked to definable use cases that would justify the costs (rather than just any telco CDR data for 24 months). Without understanding what these use cases are, it is difficult for Telcos to comment on which CDR data sets could help achieve those outcomes.

3.27. In line with MVP approach, consider use case solutions with simplest data (e.g. amount paid as referenced in 3.1(4)).

3.28. The earliest holding day should be 1 July 2022, to avoid undue burden on carriers and CSPs.

3.29. We do not support the timeframe of requiring carriers and CSPs to disclose consumer data for up to the past two years. Communications Alliance considers that an appropriate period for the provision of 'historical data' is between the date of commencement of the CDR rules and the date that industry is required to achieve compliance with the CDR regime. We submit that this period should be a period of no more than 12 months.

3.30. Any additional periods would impose significant costs and compliance burden on industry, with questionable, if any, benefit to consumers.

3.31. Also, there should not be any requirement to provide any data in relation to legacy services that are no longer generally available in the market, because this data would not contribute in any way to improving the forward-looking decision-making of consumers.

17. Are there any considerations specific to the telecommunications sector that we should be aware of in relation to historical data?

3.32. Any requirement to make all historical data instantly available would generate prohibitive and unjustifiable data storage costs for providers, and therefore should not be mandated.

18. Do you support the inclusion of closed account data for customers with an open account?

3.33. No. Customers should only be able to request data in relation to their accounts that are open and have been in active use during the previous 12 months. The regulatory burden in requiring providers to retain historical data is significant.

3.34. There is also only very limited value of usage data for closed accounts – for example, data consumption for a service that is one year old will not be helpful for new services if there have been technology changes (i.e. access to 5G or the customer's new physical address has a different fixed-service technology that provides additional capacity).

19. Do you have any comments on the approach to sharing closed account data – for example, when a request could be made and how much data on a closed account could be shared

20. If accessibility data were to be included as required product data, what types of accessibility data could be shared?

3.35. Not all providers record accessibility data – typically due to sensitivity and privacy concerns. Also, any data generated via a consumer's interactions with self-service is typically not recorded.

21. Are there any entities (other than carriers or CSPs) that generate and hold telecommunications data, and if so, should these entities be subject to reciprocal data sharing obligations if they were to become accredited data recipients?

3.36. Refer to item 3.1.

4. Eligible CDR consumers

4.1. As previously stated, enterprise customers should be excluded due to significant costs of inclusion including a lack of industry standardisation and management of customers in separate systems for this segment – noting also the typically bespoke nature of enterprise customers contracts and the fact that each customer already has ready access to their data.

4.2. Only the Primary Account Owner (PAO) should be an eligible CDR consumer in telecommunications, because the way that customers agree to set up authorities on their account(s) may not support exposure of data to external bodies. This is different to the CDR general rules which allows for both primary and secondary users to share data. Primary reason is the complexity of consents and control that would be given to full authority customers who could then potentially share data of other users on the account (which those other users may not be aware of).

4.3. Offline customers can be included if Treasury/DSB follow two key principles:

i) that the 'offline' customer, **must** become an 'online' customer to interact with the CDR regime; and
ii) the process for a data holder to allow a customer to become an online customer must follow the organisation's existing sign-up/authentication processes.

Questions

24. What kinds of 'secondary users' (users with account privileges, other than the account holder) exist in telecommunications? You may wish to comment generally on account structures and/or the prevalence of additional users with account privileges, and whether this is product or customer-type specific. Are user accounts structured the same across different product types? If so, does this affect how secondary or other users should be defined?

4.4. There is not a single consistent approach across the industry, in terms of account structures.

25. How are account privileges defined in telecommunications? Is there an existing definition of account privileges that distinguishes between different types of users?

26. Where account holders may be able to access consumer data about third party users of the account (for example where an employer is an account holder for an employee's product or service), should data not be shared in these circumstances? If not, how can these types of accounts be excluded?

4.5. All of the above issues are being addressed inconsistently across services within providers and certainly across service providers.

4.6. With respect to account holder access to data about third party users of the account, providers have different ways to manage this issue, depending on the service in question. It appears that in many cases, it will not be possible to exclude this data/these accounts.

4.7. Some Communications Alliance members hold the view that only account holders should be able to request CDR data for that account. This is because, while someone could be a secondary user or service user, they do not have the same level of authority and account access in relation to the account. Concern has been expressed about creating unnecessary complexity and difficulty in relation to authentication and consent.

Users without online access

Questions

27. Should 'offline customers' (i.e. customers who do not have online access to the relevant account) be considered eligible CDR consumers?

4.8. Offline users should be excluded unless the principles outlined at the beginning of this section are incorporated.

Enterprise customers interaction with CDR

Questions

22. Should the definition of eligible consumer for the telecommunications sector exclude some or all types of enterprise customers? If some enterprise customers should be excluded, how should the rules distinguish between eligible and ineligible enterprise customers?

4.9. We note Treasury's view in section 76 of the paper, which states: "Similarly, we recommend that products that are offered to enterprise customers and are highly negotiated would also be excluded from product data sharing on the basis they are not publicly offered." Enterprise customers who are not receiving publicly offered products, whether highly negotiated or not, are highly unlikely to consider switching to the types of standard products that would be available through product reference data sharing.

4.10. The definition of eligible consumers for the telecommunications sector should be limited to mass market consumers and exclude all types of enterprise customers, irrespective of the degree of negotiation of the terms of the contract or the value of the individual components of a communications solution.

4.11. There is no evidence that enterprise customers, already served by a highly competitive market, would benefit from the consumer data right. Enterprise customers are highly unlikely to use the CDR. Enterprise customers manage their telecommunications needs in a customised manner Arrangements with these customers are often for a set period and subject to confidentiality clauses.

4.12. The rules should define an eligible consumer as an individual who is buying publicly offered standard services for personal use under a standard form agreement. That is, while this consumer can choose from a wide selection of plans that suit their personal needs, they are not negotiating contracts and special conditions on a customer-by-customer basis.

4.13. The approach that enterprise customers take to procuring services is very different than how an individual purchases telecommunications services for personal use. In the enterprise sector, customers are often purchasing a combination of goods and services to create a bespoke communications solution which may consist of any combination of network, management, platform, and security services. In addition, local purchases in Australia may be part of a greater global network negotiated and delivered at that scale. Thresholds based on the nature or value of the individual components of that communications solution would not be appropriate as they do not necessarily reflect how the customer engages with the provider. It is the distinct enterprise requirement and service delivery approach that is relevant. That approach is a demand for individualised contract terms with tailored technical, security, and network requirements under service level agreements (SLAs) and these plans are not publicly offered.

4.14. There is no benefit in receiving consumer data for enterprise customers as the contracts are often highly individualised, negotiated and custom-made. The data is unlikely to be able to support pricing and negotiation for bespoke products in the future, or other use cases.

4.15. Enterprise customers and mass-market consumers merit distinct regulatory treatment, reflective of the bespoke nature of enterprise communications solutions. Policy makers and regulators must carefully test the necessity and proportionality of applying regulatory provisions to enterprise service providers and their customers.

4.16. Excluding obligations and requirements that do not contribute to the performance of efficient and purposeful regulatory intervention will avoid placing unnecessary and disproportionate burdensome compliance costs on enterprise service providers in this case.

4.17. A CDR framework that includes enterprise customers would impose an undue burden on providers. The costs for providers in including enterprise customers would be significant. For those retailers who provide services to both mass market and enterprise customers, the data in relation to enterprise customers is generally held in different billing and operational systems. For retailers who only serve enterprise customers, they will incur very material unnecessary costs without any commensurate consumer benefits

Technical Standards

4.18. Communications Alliance considers there is an opportunity to further simplify the various CDR standards for implementation of the CDR regime in the telecommunications sector.

4.19. We consider that it will be important to identify the learnings from implementation in the banking sector and apply these learnings to deliver a CDR regime in the telecommunication sector that maximises opportunities for simplification and efficiency.

5. Other design issues

White labelled products

Questions

33. Does the cross-sectoral approach to white labelling as outlined in this paper suit the telecommunications sector? Why/why not?

5.1. In general terms, yes.

34. If all brand owners are carriers or CSPs who have the contractual relationship with the consumer, are white labelling rules required for the telecommunications sector?

5.2. Communications Alliance supports Treasury's views that:

1. the service provider with the contractual relationship with a consumer should be required to respond to product and consumer data requests; and
2. where there are two service providers, the service provider with the contractual relationship with the consumer can agree with the other service provider that the other service provider will perform that obligation on their behalf. However, the service provider with the contractual relationship with the consumer remains accountable to the consumer.

Internal dispute resolution requirements

Questions

35. For internal dispute resolution, should existing sector-specific IDR provisions (such as the Complaints Handling Standard) be leveraged for data holders who become ADRs sharing telecommunications data?

5.3. Yes, CDR complaints ought to be handled under the existing Complaints Handling Standard. The Standard binds all CSPs. OTT players would not be covered by the Standard, however that is not in and by itself a reason not to use the Standard for CSPs.

Staged implementation

Questions

38. Would you support a phased approach to the application of CDR obligations for the telecommunications sector? Why/why not? If you support a phased approach, how should it be phased?

5.4. Yes, we support a phased approach, and it will be important for industry to be able to make further inputs on this issue once the draft rules and standards consultation commences.

5.5. If an approach is adopted whereby smaller providers are given a longer timeframe to become compliant with the framework, those smaller providers should be able to elect to join at earlier stages, if they wish.

5.6. It is relevant to note, in the context, that a 12-month CDR implementation timeframe did not prove to be sufficiently long for the banking sector and is highly unlikely to provide sufficient times for budgeting, execution and testing of IT and business process changes, and recruitment and training of staff in the telecommunications sector.

5.7. The sharing of data should commence with the product reference data set first after period of 24 months after the CDR rules are made, followed by consumer data a further 12 months thereafter.

6. Conclusion

Communications Alliance looks forward to continued engagement with the Treasury and the DSB and all relevant Stakeholders on development and implementation of a practical and meaningful CDR in the telecommunications sector.

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